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No. 87-7023 (3)

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1987

TYRONE VICTOR HARDIN,

Petitioner,

v

DENNIS STRAUB, Warden,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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Supreme Court, U.S.

FILED

AUG 23 1988

JOSEPH F. SPANIOLO, JR.
CLERK

QUESTION PRESENTED

WHERE A PRISONER ATTEMPTED TO BRING AN ACTION UNDER 42 USC § 1983 CHALLENGING CONDUCT BY PRISON OFFICIALS WHICH OCCURRED DURING HIS INCARCERATION, DID THE DISTRICT COURT ERR IN SUA SPONTE DISMISSING THE COMPLAINT FOR FAILURE TO COMPLY WITH THE THREE-YEAR STATUTE OF LIMITATIONS?

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STATUTES INVOLVED

The pertinent portions of the statutes involved are:

MCL 600.5805; MSA 27A.5805--

"(1) A person shall not bring or maintain an action to recover damages for injuries to persons or property unless, after the claim first accrued to the plaintiff or to someone through whom the plaintiff claims, the action is commenced within the periods of time prescribed by this section."

"(8) The period of limitations is 3 years after the time of the death or injury for all other actions to recover damages for the death of a person, or for injury to a person or property."

MCL 600.5851; MSA 27A.5851--

"(1) Except as otherwise provided in subsection (7), if the person first entitled to make an entry or bring an action is under 18 years of age, insane, or imprisoned at the time the claim accrues, the person or those claiming under the person shall have 1 year after the disability is removed through death or otherwise, to make the entry or bring the action although the period of limitations has run. This section does not lessen the time provided for in section 5852."

STATEMENT OF THE CASE

It should be noted that the Respondent was, as far as can be determined, never served a copy of the complaint. He did not file any pleadings in the district court and only a letter was sent to the Sixth Circuit Court of Appeals stating that there was no participation in the lower court and nothing would be done on appeal unless requested by the court. The Court of Appeals did not request Respondent to participate in the appeal.

Since Respondent has made no independent investigation of the facts or claims made by Petitioner, it must be assumed for the purposes of this response only that the facts contained in the petition are true.

REASONS FOR DENYING THE WRIT

THE COMPLAINT WAS PROPERLY DISMISSED FOR
RESPONDENT'S FAILURE TO FILE WITHIN THE TIME
PRESCRIBED BY THE STATUTE OF LIMITATIONS.

According to Petitioner, he was improperly placed in administrative segregation on October 24, 1980 and subjected to cruel and unusual punishment while so confined (Petition p 4). In response to his claims of improper treatment, he filed a 42 USC § 1983 action on December 29, 1986, in the United States District Court for the Eastern District of Michigan. The events which formed the basis of his complaint took place over six years prior to the filing of the complaint. Petitioner further claims he was unaware of his improper treatment until he obtained a report and handbook in September of 1985.

Petitioner's claim accrued when he knew or through the exercise of reasonable diligence should have known that he had a possible cause of action. Grimm v Ford Motor Co, 157 Mich App 633, 403 NW2d 482 (1986), lv den 428 Mich 902, 406 NW2d 465. It is clear from the petition that Petitioner knew or should have been aware that he was being subjected to cruel and unusual punishment and improper administrative segregation in October of 1980. To claim that he was unaware until he read a report five years later lacks credibility on its face. Clearly, Petitioner's claim accrued in October of 1980 when the actions were allegedly taken against him.

In Wilson v Garcia, 471 US 261, 105 S Ct 1938, 85 L Ed 2d 254 (1985), this Court found that federal law requires that § 1983 claims for statute of limitation purposes should be characterized as personal injury action. In Michigan the statute of limitations for personal injury actions is three years from when the claim accrues. MCL 600.5805(8); MSA 27A.5805(8).

Michigan also has a statute which tolls the time for filing a suit under certain circumstances. In pertinent part the statute provides:

" ... if the person first entitled to make an entry or bring an action is under 18 years of age, insane or imprisoned at the time the claim accrues, the person or those claiming under the person shall have 1 year after the disability is removed through death or otherwise, to make the entry or bring the action although the period of limitation has run." MCL 600.5851(1); MSA 27A.5851(1).

In Board of Regents of the University of the State of New York v Tomanio, 446 US 478, 100 S Ct 1790, 64 L Ed 2d 440 (1980), it was held that a state statute tolling the statute of limitations is to apply to § 1983 actions so long as the results are not inconsistent with federal law or policy. The federal policies underlying § 1983 were identified in Campbell v Guy, 520 F Supp 53 (ED Mich, 1981), aff'd 711 F2d 1055 (CA 6, 1983), cert den 464 US 1051, 104 S Ct 731, 79 L Ed 2d 190

(1984), as "the compensation of prisoners whose federal rights have been violated as well as the prevention of an abuse of power by those acting under color of law." 520 F Supp at 55.

Clearly, the primary purpose of § 1983 is to deter unconstitutional behavior on the part of officials under color of law. To achieve this goal, it is necessary to assure that § 1983 claims are resolved as quickly as possible so that officials are aware of what conduct is appropriate and what conduct is not. This is especially true in the prisoner context where corrections officials are constantly making decisions and taking actions involving the activities and rights of prisoners. To allow § 1983 claims to linger until one year after a prisoner is released could allow such claims to be filed ten, fifteen, twenty years or longer after the actual events. Such delays do nothing to further the federal policy of deterrence and may, by allowing conduct to go unchallenged for a substantial period of time, encourage similar conduct. As this Court noted in Felder v Casey, 486 US ___, 108 S Ct 2302, 100 L Ed 2d ___ (1988):

"Because statutes of limitation are among the universally familiar aspects of litigation considered indispensable to any scheme of justice, it is entirely reasonable to assume that Congress did not intend to create a right enforceable in perpetuity."

The tolling provision as applied in prisoner matters is clearly inconsistent with the federal policy of deterrence

implicit in § 1983 in that it allows persons aware of possible unconstitutional conduct to allow the conduct to continue and possibly affect others. Such delays in challenging conduct render the underlying policy of deterrence of § 1983 inconsistent with the tolling provisions.

The Court in Campbell v Guy, supra, further rejected the claim that being in jail was per se a disability for prisoners bringing § 1983 actions. Given the number of prisoner lawsuits filed by prisoners today, incarceration is not a deterrent to the filing of a lawsuit. The Sixth Circuit noted in Higley v Michigan Department of Corrections, 835 F2d 623 (1987):

"We are acutely aware of the multitude of cases filed by other Michigan prisoners seeking § 1983 relief in federal courts [footnotes omitted]. The plethora of § 1983 cases filed indicates very clearly the accessibility of federal courts to prisoners such as Higley. There is no logical basis for applying a tolling period to encourage stale claims in the face of such ready availability of a federal forum to hear and consider these claims." 835 F2d at 626.

The Sixth Circuit recognized that the tolling provision contained in MCL 600.5851(1) was inapposite to the federal policy of deterrence when applied in § 1983 actions. This rationale is in conformity with existing Supreme Court precedent especially in light of the accessibility of courts by prisoners and a need to resolve § 1983 claims in an

expeditious manner so as to advance the underlying policy of deterrence. For these reasons the Court should deny the petition.

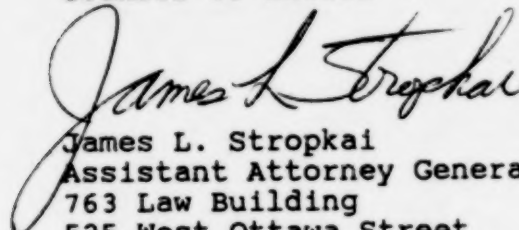
RELIEF

WHEREFORE, for the foregoing reasons, Petitioner has not met the criteria of Supreme Court Rule 17 and therefore, his petition should be denied.

Respectfully submitted,

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